

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

K.MIZRA LLC

*

* September 26, 2022

VS.

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* CIVIL ACTION NO. W-20-CV-1031

CISCO SYSTEMS, INC.

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BEFORE THE HONORABLE ALAN D ALBRIGHT
STATUS CONFERENCE HEARING (via Zoom)

APPEARANCES:

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transcript produced by computer-aided transcription.

09:31 1 (Hearing begins.)

09:31 2 DEPUTY CLERK: A Civil Action in Case
09:31 3 6:20-CV-1031, K.Mizra LLC versus Cisco Systems,
09:31 4 Incorporated. Case called for a status conference.

09:31 5 THE COURT: If I could have announcements
09:31 6 from counsel. Give me -- and I'll get my cheat sheet
09:31 7 out while you're doing that.

09:31 8 Good morning.

09:31 9 MR. ABRAHAM: Good morning, Your Honor.
09:31 10 This is Joseph Abraham of Foley Law Group here on
09:31 11 behalf of plaintiff K.Mizra LLC.

09:31 12 With me today is my partner Cliff Win of
09:31 13 Folio Law Group. And also today we have fine
09:31 14 representative, Chuck Hausman, CEO of K.Mizra.

09:31 15 THE COURT: Okay.

09:31 16 Good morning.

09:31 17 MR. UNDERWOOD: I apologize, Your Honor.
09:31 18 This is Travis Underwood for the defendant Cisco. I'm
09:32 19 joined with Liz Brannen, and we're ready to proceed.

09:32 20 THE COURT: Well, I had a trial last week
09:32 21 where some of the lawyers couldn't figure whether they
09:32 22 should talk or not, and we were in person. So it's
09:32 23 much harder on Zoom.

09:32 24 I will say I'm not sure exactly which
09:32 25 order to take this -- just in terms of lawyers because

09:32 1 of what we have from the PTAB. So why don't I start
09:32 2 with counsel for plaintiff?

09:32 3 And then, you know, obviously,
09:32 4 Mr. Underwood, I'll give you a chance to say whatever
09:32 5 you care to as well. But I think this is just a status
09:32 6 conference to figure out what we do moving forward and
09:32 7 get your suggestions.

09:32 8 MR. ABRAHAM: Sure, Your Honor. Thank
09:32 9 you very much.

09:32 10 And counsel -- Ms. Brannen and I had a
09:32 11 chance to speak last week along with Mr. Win. We have
09:32 12 some preliminary thoughts that we exchanged.

09:32 13 Basically it looks like, you know,
09:32 14 plaintiff's position is the case should restart in
09:32 15 fairly short order. We have an existing scheduling
09:32 16 order that we think would mostly work, more or less
09:32 17 picking up where we left off possibly with a little bit
09:33 18 of extra cushion at the beginning so that everybody can
09:33 19 get their ducks back in a row in terms of where we were
09:33 20 in the middle of discovery and the middle of some
09:33 21 motions on which briefing hadn't closed.

09:33 22 But that is basically where we are.

09:33 23 The '705 patent has made it out of IPR.
09:33 24 The '892 patent, the PTAB did find invalid. We are
09:33 25 presently considering our options as to what to do with

09:33 1 that patent going forward. Potentially severing could
09:33 2 be an option. Potentially dismissing could be an
09:33 3 option. But we are discussing and have not yet come to
09:33 4 rest on that.

09:33 5 THE COURT: So if I -- I think I hear you
09:33 6 correctly. And this -- and to some extent I do give
09:33 7 some deference to the plaintiff here in the sense that
09:33 8 y'all brought the case and it's your case and with what
09:33 9 you want to do.

09:33 10 You are prepared -- you would be
09:33 11 prepared -- I'm just -- not saying you've committed to
09:33 12 this, but your interest is in moving forward on the
09:33 13 case that's gotten out of PTAB, and you'll figure out
09:33 14 what to do with the other.

09:34 15 But you would not be opposed, for
09:34 16 example, possibly of severing it or doing what needed
09:34 17 to be done. However you're going to protect your
09:34 18 rights with respect to that, you can do.

09:34 19 But you would prefer for the case, with
09:34 20 respect to the patent that is -- that got out of the
09:34 21 PTAB to move forward. And fair summary of you -- and I
09:34 22 don't want to misstate what you said.

09:34 23 MR. ABRAHAM: No. I would say that is
09:34 24 broadly correct, Your Honor. Thank you.

09:34 25 THE COURT: Okay. And response?

09:34 1 MS. BRANNEN: Good morning, Your Honor.

09:34 2 Sorry. Go ahead.

09:34 3 MR. UNDERWOOD: I was going to say, I was
09:34 4 going to defer to my co-counsel Ms. Brannen. Now I've
09:34 5 spoken over people twice, so we're off to a great
09:34 6 start.

09:34 7 MS. BRANNEN: My apologies.

09:34 8 THE COURT: Yes, ma'am.

09:34 9 MS. BRANNEN: Good morning, Your Honor.
09:34 10 This is Liz Brannen. I was enthusiastic and did not
09:34 11 mean to cut Mr. Underwood off. But I'm from the law
09:34 12 firm Stris & Maher representing Cisco, and we also have
09:34 13 two client representatives with us today, Xiao Chang --

09:34 14 THE COURT: Oh, I'm sorry.

09:34 15 MS. BRANNEN: -- and Buddy Toliver.

09:34 16 THE COURT: I always try and make it a
09:35 17 point to show my appreciation for clients who take the
09:35 18 time to show up, so I'm glad you let me know that. And
09:35 19 I'm sorry we didn't get that on earlier. So welcome.

09:35 20 MS. BRANNEN: Thank you.

09:35 21 And Cisco's position is I've had the
09:35 22 chance to discuss with Mr. Abraham and Mr. Win a little
09:35 23 bit, is that as long as both patents remain live,
09:35 24 basically each party lost once and each party's
09:35 25 appealing. The stay is supposed to be in place till

09:35 1 the PTAB proceedings are resolved.

09:35 2 And as long as each side is appealing
09:35 3 their loss, we'd like to see it stay that way.

09:35 4 We do have some other thoughts if the
09:35 5 case is going to proceed on the '705, the one that the
09:35 6 PTAB did not find invalid. This may be a case, you
09:35 7 know, where it makes sense to take up a dispositive
09:35 8 motion first rather than going full force if that one
09:35 9 is going to go forward.

09:35 10 I've talked to Mr. Abraham and Mr. Win
09:35 11 about that, and I don't think they're open to that
09:36 12 either. But I did want to put that out there.

09:36 13 THE COURT: Okay. Okay.

09:36 14 So it sounds to me like your opening bid
09:36 15 is that since they were both filed and you'd like them
09:36 16 to both go to the Circuit at the same time and see what
09:36 17 happens, that's probably not going to be successful.
09:36 18 That argument probably isn't persuasive to me.

09:36 19 I feel like, you know, if it -- just from
09:36 20 my own getting stuff done, I think you need to -- I
09:36 21 need to move forward on the one.

09:36 22 But I -- but tell me more about the kind
09:36 23 of motion that you think would need to be taken up
09:36 24 earlier and let me see if that's something that would
09:36 25 be -- make sense.

09:36 1 MS. BRANNEN: It's a motion -- and we had
09:36 2 briefed it, Your Honor, with both patents. So we --
09:36 3 you know, only part of the motion would matter if we
09:36 4 move forward on the '705.

09:36 5 But it's a written description motion.
09:36 6 There is a limitation that's in the claims that are
09:36 7 asserted. It's in every asserted claim. And we
09:37 8 believe on the intrinsic record it's pretty clear that
09:37 9 they can't satisfy the written description requirement.

09:37 10 They disagree and have filed an
09:37 11 opposition. We have yet to file Cisco's reply.

09:37 12 But I do think it's the kind of motion
09:37 13 that may -- it's a different case than the case where
09:37 14 there's nothing clean like that. You're either going
09:37 15 to agree with us, and I think you will -- obviously I'm
09:37 16 biased -- or not. But it's another thing that could
09:37 17 really lead to an efficient path forward here.

09:37 18 THE COURT: Let me ask you this: If it's
09:37 19 already briefed through the first two rounds and just
09:37 20 waiting on a reply, knowing you guys, a surreply, and
09:37 21 no one's ever happy not to get the last word in.

09:37 22 And I say all this with good humor. I
09:37 23 did this for 20 years, so I say it as one of you and
09:37 24 not mocking you.

09:37 25 It seems to me if it's already briefed,

09:37 1 there's no reason why I -- we couldn't get you started
09:37 2 on the case, you know, with discovery, get a scheduling
09:38 3 order in place my guess is well, you know, as you know,
09:38 4 we have a standard order that y'all are free to do
09:38 5 whatever you want by agreement or not.

09:38 6 But I would be happy -- given that you
09:38 7 are correct that I am letting one case go forward on
09:38 8 appeal and not the other. I would be happy to take
09:38 9 that motion up early. In fact, that makes sense to me
09:38 10 if it's briefed.

09:38 11 So motion -- means it's your motion. How
09:38 12 long would you need -- how long would Cisco need before
09:38 13 they would be able to get a reply done?

09:38 14 MS. BRANNEN: May we have two weeks, Your
09:38 15 Honor?

09:38 16 THE COURT: This will surprise you: I
09:38 17 have plenty to do. This is one of my favorite cases
09:38 18 and we're sitting anxiously waiting your reply. But I
09:38 19 think you can have as much as time as you want on it.

09:38 20 You tell -- I tell you what. You guys
09:38 21 come up with a schedule, whatever works for y'all. I'm
09:39 22 happy to get -- allow a surreply as well. And you guys
09:39 23 come up with a schedule.

09:39 24 All I care about is during my screening,
09:39 25 I put the burden on you. When everything's done and

09:39 1 ready, if you will let my law clerk know. I think this
09:39 2 is Beth's case. And so we have a wonderful new set of
09:39 3 law clerks. So if -- let her know.

09:39 4 And y'all are at great peril too because
09:39 5 she may be the smartest law clerk I've had in five
09:39 6 years.

09:39 7 And so, you know -- so I'll -- whatever
09:39 8 happens to this one, it'll be between -- it'll be me
09:39 9 working with a very, very talented law clerk.

09:39 10 But y'all just let us know when it's
09:39 11 ready for a hearing. As soon as we can set a hearing,
09:39 12 we will. If you guys would prefer to do the hearing in
09:39 13 person, happy to do that. If you're happy doing it by
09:39 14 Zoom, happy to do that as well. And we'll do that.

09:39 15 But y'all can go ahead -- go ahead and
09:39 16 get in place a scheduling order. You can start getting
09:40 17 your discovery done and all that.

09:40 18 But we'll set it quickly enough that --
09:40 19 and, you know, we -- I don't, as you all know, for
09:40 20 better or worse, tend to sit on these things. I don't
09:40 21 like to have a hearing and then, like, 11 months from
09:40 22 now tell you what I think. You know, I -- that -- I
09:40 23 never cared for that when I was a lawyer.

09:40 24 Y'all get us -- finish the briefing, let
09:40 25 us know the briefing's done. We'll set a hearing. I

09:40 1 will rule on it almost for sure at the hearing or very,
09:40 2 very shortly after that.

09:40 3 But go ahead and get the other stuff on
09:40 4 track. And assume, for purposes of that, that I'm
09:40 5 going to deny it. Just -- I haven't even seen it. I'm
09:40 6 just saying, just prepare as though you're going to be
09:40 7 going to trial. But we'll take up the hearing.

09:40 8 Is there anything else we need to take up
09:40 9 today?

09:40 10 MR. ABRAHAM: For plaintiff, I don't
09:40 11 think so, Your Honor. I think we're clear enough about
09:40 12 what you intend.

09:40 13 THE COURT: Okay.

09:40 14 MS. BRANNEN: Likewise for Cisco, Your
09:41 15 Honor.

09:41 16 THE COURT: Thank you so much for being
09:41 17 here. That was the quickest hearing ever. So y'all
09:41 18 get extra points for that as well.

09:41 19 Have a great Monday. Take care.

09:41 20 (Hearing adjourned.)

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1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
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5 I, Kristie M. Davis, Official Court
6 Reporter for the United States District Court, Western
7 District of Texas, do certify that the foregoing is a
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